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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,514	09/22/2005	Beatrice Mottelet	262585US6PCT	5478

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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LONEY, DONALD J

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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03/04/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,514	<b>Applicant(s)</b> MOTTELET ET AL.	
	<b>Examiner</b> Donald Loney	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/07/05</u> . | 6) <input checked="" type="checkbox"/> Other: <u>translation of DE 2350602</u> .        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13- 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13, lines 5-10, a micro-cavity is recited, however, it is unclear as to the structure thereof in relation to the other elements in the claim. The examiner believes this may be due to translating the priority document. From the specification the micro-cavity is a space between the 5a between the spacer frame 4 that contains openings 9a to let sound waves travel from the main space 5 between the glass sheets 2, 3. In claim 2, a thin layer is recited, however, from the specification this is not actually a layer but a space as explained above. The rest of the claims have additional descriptions which are confusing in nature due to the particular wording thereof when one references the specification as thereto. Again the examiner believes this is due to the translation of the priority document. The examiner will attempt to apply art as to the structure thereof as explained above when viewing the claims in light of the specification in order to have an understanding of the particular recitations.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13, 16, 17, 18 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by DE2803740.

DE '740 discloses a glazing unit comprising two substrates 1, 2 and a device (i.e. spacer 31, 32) having a micro-cavity (i.e. space between element 7 and the glass sheets 1 and 2) and means 7 that contains openings 73, 74 which lets acoustic waves travel from the main cavity through the micro-cavity into element 7 per claim 13. With regards to claim 16 and 17, there is a micro-cavity on both sides of element 7 between the glass sheets 1 and 2. The examiner is ordering a translation since one is not available at the present time.

5. Claims 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2350602.

DE '602 discloses a glazing unit comprising two substrates 1, 2 and a device (i.e. spacer 6) having a micro-cavity (i.e. space between element 6 and the glass sheets 1 and 2) and means 6 that contains openings (i.e. holes as shown in the figure) which lets acoustic waves travel from the main cavity through the micro-cavity into element 6 per claim 13. With regards to claim 16 and 17, there is a micro-cavity on both sides of element 7 between the glass sheets 1 and 2. It is noted that claims 13-18 correspond to original claims 1-6 of which DE '602 was cited as an X-reference against in the search report.

***Claim Rejections - 35 USC § 103***

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '602.

The primary reference teaches the invention substantially as recited except for the holes being slots per claims 18 and 19. They are shown as round holes. See the 35 U.S.C. 102 rejection above.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to DE '602 to form the holes in the form of slots since this would merely be a change in size and/or shape which is generally within ordinary skill in the art. See MPEP 2144.04IV. Additionally, one would size the slots as needed to allow flow there through as needed for a particular application. With regards to claims 21 and 22, the spacer is at least U-shaped as seen in the figure.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '602 as applied to claims 19-22 above, and further in view of Brichard et al (3921359).

The primary reference teaches the invention substantially as recited except for the foil layer as recited. See the 35 U.S.C. 103 rejection above.

Brichard et al discloses a foil layer 26 attached to the edges of the glass sheets in order to form a tight seal therefrom. See 26 in figure 8.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to DE '602 to include a foil layer, as taught by Brichard et al, as an outer seal in order to provide the unit with an additional seal as known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Loney whose telephone number is (571) 272-

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1493. The examiner can normally be reached on Mon, Tues, Thurs and Fri. 8AM-4PM, flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald J. Loney/  
Primary Examiner  
Art Unit 1794

DJL;D.Loney  
02/04/08